JACQUELINE BEY (M.W.)

v.

EDMOND LEE YOK LUNG

HIGH COURT, SINGAPORE
FA CHUA J
[DIVORCE PETITION NO. 2018 OF 1984]
10 MARCH 1988

FAMILY LAW: *Claim by wife for maintenance and proceeds of sale of house - Whether house was matrimonial home - Principle to be applied in awarding maintenance.*

This was a claim for maintenance by the petitioner and for a share in the proceeds of the sale of a house which was bought by the respondent while the parties were married. They were divorced. The respondent contended that the said house was never their matrimonial house as they had never breed there and that the petitioner did not contribute towards the purchase. He also contended that the proceeds of sale had been dissipated. The respondent had been based in Brunei as a bank officer when the house was purchased. When the parties were in Singapore prior to the respondent's transfer to Brunei, they lived with the respondent's parents. The petitioner was not highly qualified and her father supported her at the time of hearing. The respondent had resigned from bank and was a free lance financial consultant.

Held:

[1] The probabilities are that the respondent purchased the house as a matrimonial house. There was no evidence that the proceeds of sale had been dissipated. Upon considering ss. 106(3) and (4) Women Charter, the petitioner was entitled to one third of the proceeds of sale of the house.

[2] In view of the petitioner's low standard of education, her lack of working experience and her age, her employment prospects were not good. The respondent's employment prospects were better. A sum of $1,000 per month was awarded as maintenance.

Cases referred to:
Wachtel v. Wachtel [1973] 1 All ER 829

Legislation referred to:
Matrimonial Causes Act 1963 [UK], s. 5(1)
Women's Charter [Sing], ss. 106(3), (4), 107, 109(1)

For the petitioner - Kan Ting Chiu
For the respondent - MPH Rubin

JUDGMENT

FA Chua J:

The parties were married on 17 April 1972, in Singapore. After the marriage they first lived with the respondent's parents. When the respondent was posted to Brunei in January 1974 as Branch Manager of the Overseas Union Bank there, the petitioner went back to live with her parents.

During the period that the respondent was living in Brunei, the petitioner visited the respondent on a number of occasions, staying with the respondent for varying periods and on one occasion for a whole year in 1976. Her last visit to the respondent was in September 1981. The parties have lived apart since 25 September 1981. The petitioner filed her petition on 20 December 1984, founded on separation for more than three years and the respondent consented to a decree being granted and decree nisi was granted on 3 July 1985.

The respondent was reassigned to Head Office in April 1985. He left the bank on 6 August 1986, when he was the Deputy Manager, Main Branch.

The respondent purchased No. 33 Jasmine Road, Singapore, in December 1980 for $258,000 with his own funds and a mortgage loan and it was registered in his sole name. The petitioner did not contribute any sum towards the purchase of the house. The house was rented out in 1981 and 1982 for $1,300 p.m. It was vacant in 1983. In June 1984 the respondent sold it for $505,000.

The petitioner has a poor education. She passed Secondary 2 and completed Secondary 3 and left school. She has never worked. She lives with her father, and is supported by him. The respondent joined the bank on the 1 February 1962 as a clerk. At the time he left the bank he was drawing a salary of $3,802 p.m. gross. In addition he would get three months annual wage supplement and at least one month special bonus. For the year 1982 his gross annual income from the bank was $64,610; for 1983 $70,285; for 1984 $75,660 and for 1985 $63,858.50. While he was in Brunei he was provided by the bank free accommodation and he had full use of a bank car. When he was reassigned to Singapore these fringed benefits ceased. He resigned from the bank of his own accord. Upon his resignation he received $4,852.96 gratuity.

The respondent is now 45 years old. He says that he is not employed but is doing some free-lancing as a financial consultant; that he had not been doing anything since he left the bank until May 1987.

In his affidavit of means filed on 18 June 1985, the respondent disclosed that for the years 1982, 1983 and 1984 his income and expenditure were as follows:

1982				
(a)	Gross Income	...	...	$64,610
(b)	Expenditure (including CPF contributions of $10,570	...	...	$67,819
	Amount overspent	(-)		$ 3,209
1983				
(a)	Gross Income	...	...	$70,285
(b)	Expenditure (including CPF contributions of $11,575	...	...	$70,039
	Balance			$ 246

1984

(a)	Gross Income	...	...	$75,660
(b)	Expenditure (including CPF contributions of ($14,019)	...	...	$72,813
	Balance			$ 2,847

Upon the application of the petitioner, the respondent was ordered to file a further affidavit disclosing all his assets and income which he had not previously disclosed.

On 12 November 1986, the respondent filed a further affidavit disclosing that the net proceeds of sale from the sale of 33 Jasmine Road, after paying off the housing loan, agent's brokerage and miscellaneous expenses, was $383,773 and that from the net proceeds of sale he had given about $100,000 to his parents for the purchase and renovation of a HDB flat at Block 306, #10-351 Hougang Avenue 5, Singapore, for themselves; that he had used another $40,000 to purchase a motor vehicle (a Mercedes Coupe) and from the balance of $243,773 he had invested $235,470 in shares; that when the share market fell he had sold some of the shares for $63,450 and incurred a loss of $138,920 and that the only shares remaining with him were as at 5 November 1986, valued at $33,100. He had also about $8,000 cash.

On 16 October 1985, the petitioner took out a summons praying for an order that the respondent pay her a lump sum maintenance of $160,000, or such other sum as may be reasonable.

The respondent in his affidavit filed on 18 June 1985, contended that the petitioner was a person of substantial means and to the best of his knowledge and belief she was worth "perhaps in the region of at least $300,000 to $500,000".

The petitioner in her affidavit filed on 16 October 1985, in reply said that what she had in her possession consisted mainly of jewellery, bequeathed to her by her late mother, which she believed was worth about $140,000; that she was given one-ninth share in the property known as No. 38 Tu Fu Avenue, Singapore, but the house was presently occupied by her father, her brothers, a sister-in-law and herself and that she also had a bank account of $5,000 which were her savings throughout the years.

She also stated in her affidavit that her monthly living expenses ranged from $300 to $600. She had to look after her father and did general household chores and in return for this her father gave her pocket money as and when she needed it.

The respondent says that from the account of income and expenditure disclosed in his affidavit of 18 June 1985, he has very little savings and even as of now he is living rather frugally as his funds are fast running out and he is hoping that he will again be gainfully employed. He maintains that he had incurred a loss of $138,920 in share transactions. He contends that No. 33 Jasmine Road was not a matrimonial property and was never intended to be so. He maintains that $160,000 claimed by the petitioner as lump sum payment of maintenance is unreasonable and excessive in the light of his present circumstances.

The respondent made no offer of payment of maintenance to the petitioner in any of his affidavits. But his Counsel informed the Court, during the cross-examination of the petitioner, that the respondent was unable to pay $160,000 but offered between $20,000 to $30,000 as a goodwill payment. However, when the respondent was being cross-examined he said:

I am not actually making an offer. First because as a matter of goodwill and to save this Ct a lot of time that I made this suggestion. Why I have not made any offer is because I believe that my ex-wife is reasonably well off and does not actually need my support. She has more substantial assets than she has disclosed.

I am willing to assist her by giving her $300 to $400 p.m., but I am not in a position to pay the $160,000 in a lump sum she asked for.

Counsel for the petitioner says that the claim of the petitioner falls under two heads:

(a) For a division of the proceeds of sale of the house No. 33 Jasmine Road which was bought and sold by the respondent during the marriage and that this claim is based under s. 106(3) of the Women's Charter (Cap 353, 1985 Ed) ("the Women's Charter");

(b) for maintenance under s. 107 of the Women's Charter;

and that the petitioner is seeking an order of a lump sum payment of the maintenance under s. 109(1) of the Women's Charter.

Counsel says that the petitioner has quantified her claim under (a) and (b) at a total of $160,000.

Counsel for the respondent submits that in law and equity, the petitioner is not entitled to any share in No. 33 Jasmine Road or for any lump sum calculated on the basis of the proceeds from the sale of the property. Counsel also submits that having regard to ss. 106(3) and 107 of the Women's Charter and in all the circumstances the Court should award not more than $300 p.m. maintenance and that the order should not be retrospective since she never asked for maintenance before.

The respondent contends that the petitioner's allegation that she was told by the respondent that No. 33 Jasmine Road ("the Property") was to be their matrimonial home is untrue. He maintains that the petitioner's claim to have a share in the proceeds of sale of the Property was conceived as an afterthought. The petition itself made no reference to the Property. The respondent submits that the Property was not matrimonial property.

The Property was no doubt acquired during the marriage by the sole effort of the respondent. The parties at that time had no matrimonial property in Singapore. The respondent would be stationed in Brunei for a limited period and when he returned to Singapore he would need to have a house. He could not expect to live with his parents or the petitioner's parents. The probabilities are that the respondent purchased the Property as the matrimonial home. But unfortunately before the respondent was posted back to Singapore the marriage broke up.

Under s. 106(3) the Court has power to order the division between the parties of the proceeds of sale of the Property. In exercising this power s. 106(4) provides that the Court shall have regard to -

(a) the extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family; and

(b) the needs of the minor children, if any of the marriage,

and, subject to those considerations, the Court may divide the assets or the proceeds of sale in such proportions as the Court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

The respondent claims that most of the proceeds of sale of the Property have been spent and he is now worth only $8,000 in cash and some shares valued at $33,100. The respondent says that he still has the Mercedes Coupe in Brunei which he visited off and on.

I cannot believe that all he possessed is as disclosed by him. The respondent was earning a good income during the period he was the Branch Manager. He had accumulated savings out of which he was able to pay $185,628 towards the purchase of the Property. He had also received $15,600 in rent from the Property in 1981 and 1982. His account with the CPF stands as at 3 February 1987, at $286,615.71.

The respondent said he had given about $100,000 out of the proceeds of sale of the Property to his parents to purchase and renovate a HDB flat at Hougang Avenue 5 for themselves. The evidence of Chua Hiang Choon, the Estates Officer of HDB Hougang South Area Office, established that the purported payment of $100,000 could not have been used towards the purchase or renovation of the flat which was completed in late 1982 and early 1983 before the proceeds of sale of the Property became available in June 1984. When confronted with this evidence the respondent conceded that the $100,000 which he alleged he gave his parents could not have been used in the purchase and renovation of the flat. The respondent has not called his mother to give evidence to support his contention that he gave $100,000 to his parents. He also failed to produce any documentary evidence of payment.

The respondent has also not substantiated his share losses of $138,920. The respondent was given notice by petitioner's solicitors' letter of 9 February 1987, to produce documentary evidence of the alleged share transactions. He said in cross-examination that when he received the letter he did his best by going through his records and had produced all the records he could find and he presumed that the rest were lost or destroyed. He said that it was not his practice to keep records of his purchase of shares once the contract was completed. The documents that he produced were one contract note and eight debit notes. All these documents relate to the purchase of shares. None of them relate to the alleged sales of shares and none of the documents identified him as the purchaser. He admitted that he did not write to the Overseas Union Bank, Brunei, for the record of the transactions done on his behalf and he also said: "I have no records of payment that I made and the proceeds which I received. I have not actually looked into it."

The documents that he has produced are at best evidence that shares were purchased but they are not evidence that they were purchased by him out of the proceeds of sale of the Property. The respondent was already buying and selling shares even before he bought the Property.

In his affidavit filed on 18 June 1985, the respondent gave details of his income and expenditure which he claimed have resulted in him not being able to save any significant part of his substantial earnings. No evidence was adduced to substantiate his expenditures.

On the evidence before me I reject the respondents claim that the proceeds of sale of the Property had been dissipated.

The question arises as to the apportionment of the proceeds of sale of the Property which is reasonable in the circumstances of the case. Giving it the best consideration I can, I think that one-third of the proceeds of sale should go to the petitioner, following the principles laid down by the English Court of Appeal in *Wachtel v. Wachtel* [1973] 1 All ER 829.

As regards the petitioner's prayer for maintenance, the respondent does not dispute the petitioner's claim that her monthly expenses are between $300 to $600 whilst she is staying with her father, who provides her with free accommodation and food. With her low standard

of education and lack of working experience and in view of her age, her employment prospects are not good. I am satisfied that she needs to be supported. On the other hand the respondent had a successful career having risen from a bank clerk to Branch Manager Brunei to Deputy Manager Main Branch when he resigned of his own accord because, as he said, he was bypassed for senior promotion which he attributed partly to the present divorce proceedings. He is now a financial consultant and his prospects are certainly far better than the petitioner's.

The respondent has made an offer to pay the petitioner $300 to $400 p.m. "as a matter of goodwill" and "to assist her". The respondent has not paid her any maintenance since the separation in September 1981, although, as he claimed, he has been maintaining his parents by giving them $1,250 p.m. and spending $1,500 p.m. on clubs and entertainment. On his offer of $400 monthly maintenance, the arrears of maintenance stretching from October 1981 to January 1988 (7 years 3 months) works out to $34,800. The offer of the respondent of $400 is an unjustifiably low sum. A sum of $1,000 would in all the circumstances be appropriate.

In *Wachtel v. Wachtel* (*Supra*) the English Court of Appeal propounded the following principles which should be followed when granting relief pursuant to s. 5(1) of the Matrimonial Causes Act 1963 whereby the Court is empowered to make an order for the payment of a lump sum to be paid by a husband to the wife:

In every case the Court should consider whether to order a lump sum to be paid by the husband to the wife, but no such order should be made unless the husband has capital assets out of which to pay a lump sum without crippling his earning power. When he has available assets sufficient for the purpose the Court should not hesitate to order him to pay a lump sum; the payment should be outright and not subject to conditions except where there are children, when it may be desirable to make it the subject of a settlement.

In the present case I am of the view that a lump sum payment should be made. The respondent is not always in Singapore but commutes between Singapore and Brunei and if he seeks employment or carries on business abroad, it would be difficult, if not impossible, to enforce payment of monthly maintenance. I am satisfied that the respondent has capital assets out of which to pay a lump sum without crippling his earning power.

Counsel for the petitioner has put forward certain figures in computing the petitioner's claim for $160,000 lump sum payment as follows:

(i) one third of proceeds of sale	-	$127,924.33
(ii) Back-dated maintenance at $400 per month	-	$ 34,800.00
		$162,724.33

or

(i) one third of proceeds of sale	-	$127,924.33
(ii) Back-dated maintenance at $1,000 per month	-	$87,000.00
		$214,924.33

In addition, the Respondent would be liable to pay prospective monthly maintenance.

The claim of the petitioner is manifestly reasonable and I therefore make an order that the respondent do pay the petitioner a lump sum of $160,000 as her share of the proceeds of sale of the Property and maintenance.

I also make an order that the respondent pay the costs of this application (excluding the costs of the petition).

Also found at [1988] 1 CLJ 723